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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,394	01/05/2004	Robert B. Tepperman	205236-9007	2644
1131 7590 02/21/2007 MICHAEL BEST & FRIEDRICH LLP Two Prudential Plaza 180 North Stetson Avenue, Suite 2000 CHICAGO, IL 60601			EXAMINER TOMPKINS, ALISSA JILL	
			ART UNIT 3765	PAPER NUMBER

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/21/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/751,394

Applicant(s)

TEPPERMAN, ROBERT B.

Examiner

Alissa J. Tompkins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 12-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/15/2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant's amendment filed on 12/15/2006 has been received. Claims 12-31 are pending.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12, and 15-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lathan. Lathan discloses an outer protective garment 10 comprising a torso covering assembly 12 having two-arm covering assemblies 14 and a pants assembly 22 having two leg covering assemblies 28. The torso covering assembly has head 16, waist 43, and wrist openings 18, which include elastic material to provide the wearer with a snugly fitted garment (Column 5, 45-63). The torso covering assembly is capable of being worn as a jacket. The pants assembly can be connected to the torso assembly and includes an elastic ankle-encompassing assembly 24 (Column 5, 64-67-Column 6, 1-4)(Figures 1 and 2). A rip cord 54 includes a grasp ring 55 that is used to close

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and/or remove the garment (Column 6, 47-58)(Figures 5 and 6). The garment is made of a thin thermoplastic material made of polyethylene (Column 7, 2-3). The thin material allows the garment to be capable of being folded or rolled up for insertion into a pouch/fanny pack.

However, Lathan is missing a garment that is perforated. Although Lathan's garment does not show perforations for the removal means 54, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use perforations in combination with the rip cord disclosed in order to help facilitate the removal function and to provide a comfortable garment that is fast and easy for the wearer to take off. Lathan's garment is made out of a thin thermoplastic material made with polyethylene.

As for claims 16-20, and 22-31, although Lathan does not state the method for using the disposable outerwear, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the outerwear as claimed in order to provide disposable outerwear to protect athletes during extended length activities.

Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lathan in view of Tisdale et al. (U.S. 5,774,892). Lathan discloses the invention substantially as applied in claims 1-12 and 15-20 above. However, Lathan is missing perforations that encircle the arms and legs providing a variable length jacket and a short-legged pant. Tisdale shows convertible clothing comprising a shirt and pants. The shirt 2 has detachable lower sleeve portions 4 allowing the long sleeved shirt to be converted to a short sleeve shirt. The pants 6 have detachable lower leg portions 8

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allowing the pants to be converted into shorts. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of Tisdale to modify Lathan in order to provide convertible clothing having removably attached sleeves and leg portions whereby the attachment means are easily concealed.

### ***Response to Arguments***

Applicant's arguments filed 12/15/2006 have been fully considered but they are not persuasive.

Applicant submits that Lathan does not disclose a material that is lightweight, strong, vapor-permeable, water resistant, puncture resistant, tear resistant, and abrasion resistant. However, Lathan discloses a garment that is made of polyethylene. The applicant provided the Examiner with an in-depth description of the protective material Tyvek, which is made of 100% polyethylene. The applicant describes the characteristics of this material in the claim language. Lathan shows a garment, which specifically discloses the use of polyethylene. Lathan's garment therefore would inherently have all of the same qualities including being lightweight, strong, vapor-permeable, water resistant, puncture resistant, tear resistant, and abrasion resistant. The applicant's arguments are not persuasive. Lathan specifically states "the torso covering assembly, the pants assembly, and the arm covering assembly include material such as thermoplastic polyethylene (Column 3, 5-10). Lathan does not disclose that any other material is used in combination with the polyethylene. It would

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have been well known in the art to use 100% randomly distributed polyethylene.

Moreover, the device of Bruder is capable of performing in the manner recited by the applicant and is therefore interpreted to meet the limitations in the claim.

Applicant submits that Lathan does not disclose a single method of using the outer protective garment and, particularly, does not disclose the method recited in independent claim 16. Although Lathan does not state the method for using the disposable outerwear, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the outerwear as claimed in order to provide disposable outerwear to protect athletes during extended length activities.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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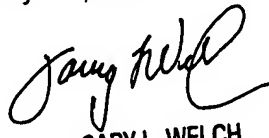
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa J. Tompkins whose telephone number is 571-272- 3425. The examiner can normally be reached on M-F 830-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Alissa Tompkins  
Patent Examiner  
Art Unit 3765  
February 19, 2007

AJT

  
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